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believed that the Examiner's "election of species" requirement is improper, and properly should be withdrawn.

Nonetheless in order to ensure compliance with the outstanding requirement, the applicant provisionally elects propylene glycol as the elected specie of solvents of claims 4, 14 and 15.

Remarks:

The applicant traverses the Examiner's assertion that the current claims fail to provide a "contribution over the prior art" reference of US 6627233 to Wolf et al. (hereinafter "Wolf"). As col. 4, Wolf remarks:

**SUMMARY OF THE INVENTION**

This invention incorporates a physiological cooling agent or combination of physiological cooling agents into a chewing gum. One preferred embodiment of the invention provides a chewing gum having a clean, cool sensation imparted by a cooling flavor composition that includes a physiological cooling agent. Another preferred embodiment also contains a flavor, and a combination of physiological cooling agents which have been treated so as to modify their release from the chewing gum. The result is a synergy

And later in the same column remarks:

In one embodiment, the invention is a cooling flavor composition comprising:

- a) about 40% to about 80% by weight menthol;
- b) about 15% to about 50% by weight menthone; and
- c) about 3% to about 25% by weight of at least one physiological cooling agent selected from the group consisting of menthyl succinate; acyclic carboxamide; menthyl lactate; 3-l-menthoxypropane-1,2-diol; N-substituted p-menthane carboxamide; menthone glycerol ketals and mixtures thereof.

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While Wolf suggests the utility of methyl lactate in a chewing gum composition as an additive, Wolf however fails to suggest or teach the subject matter of applicant's claim 1, which currently reads:

1. (currently amended) A method of preparing a solution of menthyl lactate, wherein the final concentration of menthyl lactate is higher than that achievable by dissolving menthyl lactate in a neat solvent, ~~by~~ by:  
liquefying menthyl lactate; and  
combining the liquefied menthyl lactate with menthol carboxamide and the solvent.

Wolf's specification does discuss one or more of his "physiological cooling agents" concurrently with menthol and methone in specific ratios, but such does not lead or suggest to a skilled artisan the solution and the method of making the solution as claimed by the present applicant.

#### **PETITION FOR A ONE-MONTH EXTENSION OF TIME**

Applicants respectfully petition for a one-month extension of time in order to permit for the timely entry of this response. The Commissioner is hereby authorized to charge the fee to Deposit Account No. 14-1263 with respect to this petition.

#### **CONDITIONAL AUTHORIZATION FOR FEES**

Should any further fee be required by the Commissioner in order to permit the timely entry of this paper, the Commissioner is authorized to charge any such fee to Deposit Account No. 14-1263.

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Respectfully Submitted;

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04 May 2009

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CERTIFICATION OF TELEFAX TRANSMISSION:

I hereby certify that this paper and all attachments thereto is being telefax transmitted to the US Patent and Trademark Office to telefax number: 571 273-8300 on the date shown below:

Allyson Ross

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04 May 2009

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